



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Minutes of the January 25, 2008, Meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Michael Friedman, Esq., Chair; Hon. David Shiah; Hon. Francis C. Marsano; Hon. Edward M. Youngblood, Hon. Mavourneen Thompson by telephone. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:03 A.M., Chair Michael Friedman convened the meeting.

The Commission considered the following items:

Agenda Item #1 Ratification of Minutes: December 7, 2007 Meeting

Phyllis Gardiner, counsel, reviewed a few word changes to Item #2. On motion by Mr. Marsano and seconded by Mr. Youngblood, the minutes as amended were adopted unanimously.

Agenda Item #2 Request for Waiver of Late-Filing Penalty/Gary C. Wood

Gary C. Wood withdrew his request for waiver.

The following agenda item was taken out of order, as Mr. Hughes had not yet arrived:

Agenda Item #4 Results of Staff Investigation/Lobbying for Maine Community Cultural Alliance

Mr. Wayne explained that in October the State Controller completed an audit of four state agencies that deal with arts and cultural matters. The controller was concerned that the Maine Community Cultural Alliance (MCCA) had hired a lobbyist and used public funds to do so and that a non-profit organization was formed to pay for the lobbyist fees. Mr. Wayne reminded the Commission that at the last meeting they had supported the staff looking into the matter, since there may have been lobbying performed which would require them to register with the Ethics Commission. Mr. Wayne further explained that the staff sent a letter to the lobbyists, Michael Saxl and James Cohen of Verrill Dana, LLP, outlining the staff's concerns

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and questions. They replied very thoroughly and willingly to the letter and provided exhibits of time summaries showing both lobbying services and non-lobbying services for MCCA. Mr. Wayne said they did provide some lobbying services, but a small portion. Mr. Wayne said the law only requires a lobbyist to register if the lobbyist has engaged in lobbying for more than 8 hours in a calendar month and has been compensated for that work. He also said lobbying means direct communication with a governmental official to influence legislation. Mr. Saxl and Mr. Cohen maintained that the amount of lobbying did not go over the eight hour threshold within a month. Mr. Wayne said that he and Mr. Lavin, Assistant Director, did go over to Verrill Dana and were given permission to look over the time records for Verrill Dana's work for MCCA. The records were kept in great detail and evidenced that Mr. Saxl and Mr. Cohen had a good understanding of what kinds of activities constitute lobbying. After reviewing the records for the busiest eight-month period, the staff felt confident that their records were accurate and that they were not required to register as lobbyists. Mr. Wayne said the staff believes that no further action is necessary. He also stated that the lobbyists were very cooperative and provided all information voluntarily.

Mr. Friedman restated the staff's recommendation that no further action by the Commission is required.

Ms. Thompson stated appreciation for staff's work and also the willing cooperation of Verrill Dana. She said that she thought the Commission should adopt the staff's recommendation. She questioned the current definition of lobbying, saying perhaps this area needs to be addressed. She expressed concern over an individual registering as a lobbyist, under the definition for eight hours; however, over a six month period that individual could lobby for seven hours and 59 minutes each month and not be considered 'lobbying' under our definition. She said her concern is there is nothing in the rules that says 'up to a number of minutes per legislative session.'

Mr. Wayne said the Legislature's intent was to have a threshold for when an individual has to register as a lobbyist. He said the intent was if lobbying did not reach eight hours in a month, then no disclosure or registration is necessary and that is how the law reads.

Ms. Thompson said this eight hour statute is concerning and needs to be looked at closer in her opinion.

Mr. Wayne said different points of view exist on the eight-hour threshold. Some lobbyists feel this is a loop hole and others are very diligent about not going over the threshold so clients do not have to pay the

\$200 registration fee. Mr. Wayne further stated that if the Commission thinks changes need to be looked at, it would be appropriate to solicit comments from lobbyists.

Mr. Youngblood said the same argument would take place no matter where the threshold was set. He said unless a particular individual is really abusing the statute, emergency legislation would not be possible.

Ms. Thompson would like to have further discussion at a future meeting. Mr. Wayne stated he could invite the lobbyists to comment and be present at that meeting.

Mr. Marsano said realistically, any legislation would not be submitted until 2010. He stated he agrees with Mr. Youngblood's statement regarding changing the threshold.

Mr. Friedman questioned whether a vote was necessary regarding the MCCA issue. It was decided that since no further action was necessary, no vote was needed.

Agenda Item #3 Failure to File Report and Return Unspent Campaign Funds/David Hughes

Mr. Wayne explained that Mr. Hughes was a special election candidate for House District 72 last November. He received \$4,287 in MCEA funds. He was required to file his campaign report 42 days after the election in November and he was required to return his MCEA funds not spent for his campaign. He did not file nor return the funds within the time required. Mr. Wayne said several calls were made and letters were sent with no response from Mr. Hughes. The lack of response to repeated attempts by the Commission staff was a concern. Mr. Wayne told the Commission members that Mr. Hughes came in to the Commission office yesterday and filed his report along with a check for unspent funds to the Maine Clean Election Act. Mr. Hughes also provided his bank statements showing payments made from his campaign account, invoices for services and examples of services that he had paid for. Mr. Wayne said his documentation helped to assure his public money was spent for campaign services. Mr. Wayne further stated that the staff will conduct a full audit of Mr. Hughes' campaign in order to be assured that everything is in order. He said the penalty for late filing (37 days late) and failure to return Clean Election Act funds could be as high as \$1,500; however, Mr. Hughes could request a waiver of all or part of the \$1,500 penalty amount. Mr. Wayne also explained that Mr. Hughes did have a personal tragic situation happen during the reporting period, which could have been a factor in why Mr. Hughes was late in filing and not returning the funds.

Mr. Hughes said that he first wanted to apologize to the people of Maine. He said the clean election process is for candidates like himself who cannot afford to run without this public money. When candidates participate in the program, they should do everything they can to reinforce the public trust and he did not do that. He apologized for his actions and wanted to be held accountable. He said he had not dealt with a personal situation like this before. It was a reporter knocking at his door that made him realize what was happening. He said he did not want to discuss the personal matter in a public forum.

Mr. Friedman asked Mr. Hughes if he understood the audit procedures and what was needed from him.

Mr. Hughes confirmed that he understood the process and that there would be penalties assessed.

Agenda Item #5 Adoption of Rule Amendments

Mr. Friedman reminded the Commission that at the October meeting, the public was invited to comment on rule changes. At the December meeting, comments were received and the comment period was extended for another ten days after the December meeting. Mr. Friedman acknowledged additional comments from Carl Lindemann. He said that Mr. Lindemann requested today's meeting be set at a later date so that he could be present to comment further. Mr. Friedman said that after discussion with Mr. Wayne, he denied the request to extend the date again. The procedure for rulemaking states that the time for public comment be set and this was done. Mr. Lindemann has submitted several written documents in the past. Mr. Friedman stated that the time for public comment has ended; therefore, it would not be appropriate to allow Mr. Lindemann to comment further by phone.

Ms. Gardiner said everyone has the same opportunity to submit comments by a deadline and the deadline has come and gone. In order to be fair to everyone, the time has ended for everyone.

Ms. Thompson agreed that the process has been followed and in fairness to all, the comment period is over. She expressed concern regarding Mr. Lindemann's continued questions over the jurisdictional issue. She would like to have this matter cleared up once and for all. She said she believes passing judgment on another Commission member is not within the members' jurisdiction.

Mr. Friedman said rehashing the same issue is not productive. He feels getting guidance from the Legislature is the next step and that should be forthcoming in the future.

Ms. Gardiner said there needs to be a formal adoption for the final rule changes as they have been presented in the packet of material today.

Mr. Shiah moved to adopt the proposed rule changes as drafted by staff; seconded by Mr. Marsano. Motion passed unanimously. (5-0)

Agenda Item #6 Proposed Advice to Section 1056-B Filers

This agenda item was withdrawn in light of pending legislative action which may provide guidance.

Mr. Marsano asked for clarification on the withdrawal of Item #2. Mr. Wayne said that Mr. Wood contacted the Commission by phone and said he wished to withdraw his request for a waiver.

Other Business

Kate Smith, MCEA Special Election Candidate

Mr. Wayne explained that Ms. Smith was in the special election in November and ran as an MCEA candidate. He reported that the staff was having difficulty getting her to return her Clean Election Act funds. When she finally sent her repayment in, the check was returned for insufficient funds. Mr. Wayne said the staff has requested Ms. Smith provide her bank statements, since her check was returned. Mr. Wayne said that if she does not willingly provide the bank statements as requested, the staff would like the Commission's authorization to perform an investigation which would include a subpoena of her bank statements for inspection.

Mr. Marsano asked why a complete audit would not be done first.

Mr. Wayne said a full audit can be done; however, if everything checks out on the bank statement, then a full audit would not be necessary. Mr. Wayne said this effort would be a 'middle-ground' approach instead of conducting a full audit.

Mr. Marsano stated that he felt a full audit under these circumstances is necessary. He said a bounced check would seem like a reason to conduct an audit, especially since she has not contacted the Commission after a letter was sent to her notifying her of the returned check.

Discussion took place regarding subpoena power and audit procedures and whether to look at the bank statement only or all documentation including invoices, etc.

Ms. Thompson said audits, either random or targeted, are very informative in helping to improve the process of the Clean Elections Act and audits tell the public that the Commission is seriously working to protect public money. She also said that a returned check from a campaign account should just not happen, if everything is done appropriately. She strongly urged an audit be done.

Mr. Youngblood said that Ms. Smith's lack of explanation the very next day is suspicious.

Mr. Friedman said the consensus is for the staff to conduct a full audit on Kate Smith's campaign.

Ms. Thompson further stated that an audit procedure is not only to discover something wrong, but to be sure the money has been appropriately used and to be sure candidates are taking the public money very seriously and being careful with it.

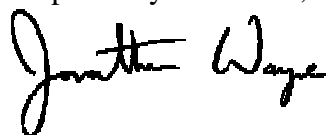
Mr. Friedman stated that the audits also have shown that the majority of candidates do spend the public money appropriately.

LaMarche Appeal of Commission's Penalty Determination

Ms. Gardiner informed the Commission that Pat LaMarche has brought a Rule 80(C) action challenging the penalty determination that the Commission decided upon at its October 30th meeting after considering the campaign's audit report.

The meeting adjourned at 9:50 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jonathan Wayne". The signature is fluid and cursive, with the first name "Jonathan" and last name "Wayne" clearly distinguishable.

Jonathan Wayne, Executive Director